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DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

STAAS & HALSEY LLP  
700 11TH STREET, NW  
SUITE 500  
WASHINGTON DC 20001

In re Application of: :  
Tanaguchi et al. :  
Application No. 09/461,335 :  
Filed: December 15, 1999 :  
For: FIGURE SELECTION METHOD, FIGURE :  
SELECTION DEVICE, AND STORAGE MEDIUM :  
STORING FIGURE SELECTION PROGRAM :

DECISION  
ON PETITION

This is a decision on the petition filed October 29, 2002 to withdraw the holding of abandonment under 37 CFR § 1.181.

The application is abandoned for failure to timely file a proper reply to the non-final Office action mailed February 13, 2002. A Notice of Abandonment was mailed October 1, 2002.

Petitioner alleges that the non-final Office action was not received.

Based on MPEP § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

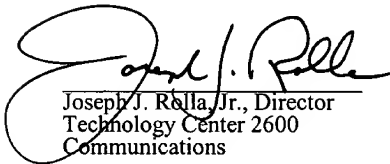
- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
  - (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
  - (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.
- The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Restriction on the part of the Patent and Trademark Office.

Petitioner meets requirements (a)-(c) above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

Accordingly, the petition is **GRANTED**.

The application is being forwarded to TC 2600 technical support staff for re-mailing of the non-final Office action. The time period for response will be set to run from the date of the new mailing.



Joseph J. Rolla, Jr., Director  
Technology Center 2600  
Communications